

IN SENATE OF THE UNITED STATES.

DECEMBER 29, 1847.

Submitted, and ordered to be printed.

Mr. PHELPS made the following

REPORT :

*The Committee on Finance, to whom was referred the memorial of Henry Simpson, administrator of George Simpson, deceased, report :*

That the petitioner asks compensation for certain services alleged to have been rendered by his intestate in the year 1813, in obtaining subscriptions to the loan of sixteen millions authorized by the act of February 8th of that year.

The facts upon which this claim rests are ascertained by the committee to be as follows :

Books were opened at the Girard bank, in Philadelphia, of which the intestate (George Simpson) was the cashier, for subscriptions to that loan. This was done under authority of a circular from the Secretary of the Treasury, bearing date the 22d of February, 1813, and addressed, among others, to the said George Simpson in his capacity as cashier. By the directions of that circular the books were to be closed on the 13th of March following, and a return of the subscriptions obtained was to be immediately thereafter made by the cashier to the department. The circular contains, also, the following clause: "An allowance will be made to you of one-eighth of one per centum on the whole amount of subscriptions received at your institution, besides the actual expense of the bank for books and stationery."

It is stated in the claimant's memorial that subscriptions to the amount of \$142,000 were received by the said George Simpson at that bank, upon which sum the cashier was doubtless entitled to the commission specified in the circular; which commission the committee understand has been allowed and paid at the department.

But the whole amount of that loan not having been subscribed on the 13th of March, 1813, (the time when the books were to be closed at the several banks,) a negotiation was afterwards opened between Daniel Parrish and Stephen Girard, both of Philadelphia, and the Secretary of the Treasury, which, on the 7th day of April,

1813, resulted in the acceptance, by the secretary, of the proposal of the said Parrish and Girard for lending to the United States, as part of said loan of sixteen millions, the sum of seven millions fifty-five thousand and eight hundred dollars. In his letter of acceptance, the secretary says: "You will be pleased to deliver, before the 15th day of this month, to the cashier of Stephen Girard's bank, and such other banks where, according to your proposal, the payments are to be made, the names of the persons embraced by your proposal, together with the sum respectively payable by each." He then proceeds to specify the terms of the loan, which are not material to our present inquiry. In pursuance of this direction the names of subscribers, to the amount of \$5,347,800, were delivered to the cashier of the Girard bank, to whom, in due time, as the committee suppose, certificates of stock were regularly issued. Upon this last mentioned sum, the memorialist claims the commission of one-eighth of one per centum, promised in the letter of the 22d of February, 1813—insisting that the transaction was, in substance, a receiving of subscriptions upon the terms of that letter, and came within the purview and spirit of the clause which tendered the commission.

This claim was, at the time of the transaction, presented at the Treasury Department, and was there rejected; from which decision the claimant appeals, by his petition, to Congress.

The committee are not advised of the particular grounds upon which the claim was rejected at the department; but, in their opinion, the most satisfactory reasons may be assigned for that decision.

In the first place, the arrangement specified in the secretary's letter of the 22d of February, 1813, expired on the 13th of March of that year. The agency of Mr. Simpson, so far as related to taking subscriptions to the loan, would of course cease at that date; and all stipulations for compensation, whether by commission or otherwise, would expire with the agency. It is very true that the secretary might have prolonged the agency, and, if he had done so, the claim for compensation would have remained as an incident to it. But the committee are of opinion, in the second place, not only that this was not done, but that the services of Mr. Simpson, in connexion with the loan taken by Messrs. Parrish and Girard, were neither within the terms or spirit of the letter of February 22, 1813, nor upon any legal or equitable principle chargeable to the United States.

It will be observed that this loan was negotiated directly between those gentlemen and the secretary, without any agency, either of the Girard bank, of which Mr. Simpson was cashier, or of Mr. Simpson himself. He appears to have had no connexion with the transaction, nor agency in it until the proposal of Messrs. Parrish and Girard was accepted and the contract consummated. It also appears that the loan was tendered by those gentlemen, in behalf of themselves and certain associates, who were not named; that payment was to be made at certain banks to be designated by them; and that the subscription was to be several, each contributor to be

entitled to a separate certificate for the amount advanced by him. It is obvious, then, that Mr. Simpson cannot be considered as having in any sense procured or received subscriptions to the loan. Indeed, books were not open for subscriptions, and he was to receive not tenders for the loan generally from all disposed to contribute, nor even any proffers from the associates of Messrs. Girard and Parrish, but was simply to receive from those two gentlemen the names of such persons as they chose to designate as associated with them in the proposal which had been already accepted by the secretary. His agency was, therefore, limited to the performance of a contract already perfected between the government and Messrs. Girard and Parrish, according to the terms proposed by them, and to a matter in which the government had no interest, except so far as this : it being understood that separate certificates should be issued to each of the contributors for his individual portion of the loan, it became necessary, before the certificates could be issued, that those contributors should be designated, together with their respective shares. This was obviously a matter which concerned themselves alone—to be regulated at their own pleasure, and to be provided for by them. It is difficult to perceive how, under these circumstances, Mr. Simpson can be regarded as the agent of the United States. Moreover, the Girard bank was an unincorporated institution, of which Mr. Girard was the proprietor. A proposition to pay at that bank was no more nor less than a proposition to pay at his own counter, for which purpose he employed his own agents, and the mere fact that certificates of stock were furnished at the bank, to be delivered upon payment of the respective shares, did not constitute Mr. Simpson the agent of the United States, in such sense as to entitle him to a claim upon them for compensation.

If it were otherwise, still his claim must rest upon a *quantum maruit*, and not upon the stipulations of the letter of February 22, 1813, with which this transaction had no connexion, and of which it was wholly independent. It appears further that, with a view to the extinguishment of this claim, the sum of five hundred dollars has been heretofore allowed at the treasury, as a compensation to Mr. Simpson for his services in adjusting the loans. Even if this should be regarded as an admission of the liability of the government, yet the committee have no reason to suppose that the allowance fell short of an adequate and just compensation ; and, in the absence of satisfactory proof on that point, they are disposed to adhere to the decision of the accounting officers made at a period when the transaction was recent, and when they must be supposed to have possessed more knowledge of the matter and more satisfactory ground for a decision than can be commanded by the committee at this late day.

The committee are the more satisfied with the view they have taken of the matter, when they consider that their opinion accords, not only with that of the department, but also with that of Congress as repeatedly and uniformly expressed. This claim has been often before this body. It was presented during the first session of

the seventeenth Congress, and a full report was made on that occasion by the Committee on Finance, adverse to the claim, and upon grounds substantially identical with those already suggested. It was before Congress at both sessions of the nineteenth Congress, both of the twentieth, the first of the twenty-first, the first of the twenty-second, the second of the twenty-fifth, and at both sessions of the twenty-sixth. On all these occasions the action of Congress was adverse to the claim.

It was also presented at the second session of the twenty-seventh Congress, when an adverse report was submitted by the Committee on Finance; (see Senate document No. 143, of that session,) and was again presented at the first session of the last Congress, when a similar report was submitted, which is to be found on the files of the Senate, but was not printed.

It appears, then, that this claim is now under consideration *for the thirteenth time*; and yet it has in no instance commended itself to the favorable action of the successive committees who have had it in charge, nor to that of Congress. It is true that, on the present occasion, the memorial professes to exhibit new and additional evidence, to wit: the letter of Mr. Gallatin to Messrs. Girard and Parrish, of the 7th April, 1813. But it appears from the papers furnished the committee by the memorialist himself that, as early as February, 1822, (more than twenty-five years ago,) Mr. Simpson, in his life time, not only relied on that letter, but furnished to the committee at that time, an extract from the same.

Under these circumstances the time has arrived when, in the opinion of the committee, this claim should be at rest. They might have contented themselves with a reference to the previous action of Congress in the matter; but they have thought proper to present this view of the case, in the hope that the claimant himself will be satisfied that his claim has received all the consideration which the most pertinacious applicant could ask; and in the hope also, that their report will put a perpetual seal upon a demand which has appeared utterly hopeless from the outset.

The committee recommend the following resolution:

*Resolved*, That the prayer of the petition ought not to be granted.